

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AIR TECHNIQUES, INC.

Plaintiff,

v.

TREE USA, INC.

Defendant.

CASE NO. 7:22-cv-04185-PMH

**~~PROPOSED~~ DEFAULT
JUDGMENT**

Having reviewed and fully considered the motion for good cause without emergency relief, the attorney’s affidavit of Jessica H. Zafonte, the memorandum of law concerning proper service of process filed by Plaintiff Air Techniques, Inc. (“Plaintiff”) pursuant to Federal Rule of Civil Procedure 55(b) and The Individual Practices in Civil Cases of the Honorable Philip M. Halpern, the Court finds that:

1. Plaintiff filed a Complaint against on May 20, 2022 Tree USA, Inc. (“Defendant”) for violations of Unfair Competition under the Lanham Act, Deceptive Acts and False Advertising under N.Y. Gen. Bus. L. §§349-350-a, Unfair Competition under New York common law, and Copyright Infringement under 17 USC §§106 and 501.
2. Defendant Tree USA, Inc. was served via its authorized agent, United States Corporation Agents, on June 7, 2022. Proof of Service was filed on June 20, 2022. (D.I. 7).
3. Defendant has not answered or otherwise moved with respect to Plaintiff’s Complaint within the statutory period.
4. On September 1, 2022, Plaintiff applied for a certificate of Entry of Default from the Clerk of this Court. (D.I. 11).

5. A Clerk's Certificate of Entry of Default was issued on September 1, 2022. (D.I. 12).

IT IS HEREBY ORDERED THAT the Clerk of this Court shall enter final judgment in favor of Plaintiff Air Techniques, Inc. and against Defendant Tree USA.

IT IS FURTHER ORDERED THAT a permanent restraining order is entered, effective immediately, restraining, enjoining and requiring Defendant Tree USA, ~~and each of its respective officers, directors, partners, agents, subcontractors, servants, employees, representatives, franchisees, licensees, subsidiaries, parents, and related companies or entities, and all others acting in concert or participation with Defendant with regard to the matters described herein,~~ are permanently restrained from:

- ~~1. Unfairly competing, engaging in deceptive acts, false advertising, misappropriating, and using false designations by using Plaintiff's digital dental images on its website and other promotional material;~~
- ~~2. Producing, reproducing, or preparing works that are substantially similar or otherwise infringe Plaintiff's copyright.~~


1. Using images taken using Plaintiff's dental imaging equipment on its website or other promotional material;

2. Producing, reproducing, or preparing works that are substantially similar to or otherwise infringe on Plaintiff's copyrighted image (U.S. Copyright Registration No. VA0002263243).

IT IS FURTHER ORDERED THAT Plaintiff has judgment in the amount of (1) \$25,000 for its damages; (2) \$22,326 for its reasonable attorney's fees and \$614.50 in filing fees and service of process expended in connection with this action; and (3) post-judgment interest as calculated under 28 U.S.C. § 1961.

SO ORDERED.

Dated: White Plains, New York
February 16, 2023

By: 
Philip M. Halpern
United States District Judge